

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File Number EB-02-DV-383
	)	
Arnold Broadcasting Company, Inc.	)	NAL/Acct. No. 200332800007
Station KNEC(FM)	)	
Yuma, Colorado	)	FRN 0006-1597-43
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 15, 2005****Released: June 20, 2005**

By the Acting Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Memorandum Opinion and Order* (“*Order*”), we dismiss as untimely the petition for reconsideration (“petition”) filed on September 2, 2004, by Arnold Broadcasting Company, Inc. (“Arnold”), licensee of radio station KNEC (FM), Yuma, Colorado. As discussed below, we dismiss Arnold’s petition because it does not comply with the Communications Act of 1934, as amended (“Act”) and the Commission’s Rules (“Rules”), and is therefore procedurally defective.

**II. BACKGROUND**

2. On December 4, 2002, the Commission’s Denver District Office (“Denver Office”) issued Arnold a *Notice of Apparent Liability* (“NAL”)<sup>1</sup> for a monetary forfeiture of twelve thousand dollars (\$12,000) for willful and repeated violations of Section 301 of the Act<sup>2</sup> and Section 11.61 of the Rules.<sup>3</sup> Arnold responded to the NAL on January 2, 2003 and sought a reduction of the forfeiture amount. Arnold conceded the unlicensed STL operations exceeded the use authorized by Section 74.24 of the Rules,<sup>4</sup> but it argued that its failure to secure a license was a procedural misunderstanding and that the operations posed no significant risk. Furthermore, Arnold admitted it violated Section 11.61(a)(2) by failing to transmit the required weekly EAS tests from the designated LP1 and LP2 sources, but it contended that station KNEC monitored the National Weather Service as an alternate measure. In the *Forfeiture Order*<sup>5</sup> issued by the Chief, Enforcement Bureau (“Bureau”), on July 29, 2004, the Bureau rejected Arnold’s claims. However, the Bureau reduced the forfeiture amount to six thousand dollars (\$6,000) in light of the color of authority granted under Section 74.24 to begin STL operations and the determination that the previously proposed forfeiture was excessive under the circumstances. On September 2, 2004, Arnold submitted a petition for reconsideration, seeking further reduction of the

<sup>1</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332800007 (released Dec. 4, 2002).

<sup>2</sup> 47 U.S.C. § 301.

<sup>3</sup> 47 C.F.R. § 11.61.

<sup>4</sup> 47 C.F.R. § 74.24 (permitting 720 hours of short-term operation of a broadcast auxiliary station without prior FCC licensing.)

<sup>5</sup> *Arnold Broadcasting Company, Inc.*, 19 FCC Rcd 14123 (Enf. Bur. 2004).

forfeiture amount based on its purported history of overall compliance with the Commission's Rules.

### III. DISCUSSION

3. Section 405(a) of the Act<sup>6</sup> and Section 1.106(f) of the Rules<sup>7</sup> provide that a petition for reconsideration must be filed within thirty days from the date of public notice of the final action. In this case, public notice of the Forfeiture Order occurred on July 29, 2004, upon its release.<sup>8</sup> Thus to have been timely, any request for reconsideration was due to be filed with the Commission no later than August 30, 2004. Arnold's submission was filed September 2, 2004. Accordingly, Arnold did not timely file its petition for reconsideration and dismissal is warranted.<sup>9</sup>

4. We note that even if Arnold had timely filed its petition, the petition would fail on the merits. Arnold contends that its "exemplary record of compliance with the Commission's rules" supports a reduction in the forfeiture amount.<sup>10</sup> Arnold relies on the Commission's decisions in *Tidewater Communications, Inc.*<sup>11</sup> and *Cornell College*<sup>12</sup> in asserting that such compliance effectively requires a cancellation of the amount. We reject Arnold's contention that it has continuously acted in accordance with the Commission's rules. On the contrary, a search of our records indicated that Arnold has been the recipient of a *Forfeiture Order*<sup>13</sup> ("*February FO*") on February 9, 2000, as well as numerous Notices of Violations ("*NOVs*"). Moreover, the *February FO* involved, *inter alia*, the same violation of Section 11.61 as this July 29, 2004 *Forfeiture Order*.

5. We believe Arnold misapplied the decisions of *Tidewater* and *Cornell College* to this case. In *Tidewater*, the company was sanctioned for only a single violation. Upon review of *Tidewater's* history, the only other violation had been rescinded by the Media Bureau, based on a U.S. Court of Appeals decision that it was unconstitutional. However, even this information only warranted a downward adjustment of the forfeiture amount; cancellation of the forfeiture was based not only on the history of compliance, but additionally on evidence of *Tidewater's* good faith reliance on faulty machinery, establishing that the action was not a willful violation.<sup>14</sup> *Cornell College* is even further removed from the issues present in Arnold's case. Unlike Arnold, *Cornell College* had never received a notice of violation from the Commission, and the cancellation of the forfeiture amount was based "primarily upon the financial hardship that would result."<sup>15</sup>

6. In addition to the *February FO* and NOV issued against Arnold for violations at station KNEC, the Bureau has issued NOV's for violations at several other stations owned by Arnold.<sup>16</sup> As

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<sup>6</sup> 47 U.S.C. § 405(a).

<sup>7</sup> 47 C.F.R. § 1.106(f).

<sup>8</sup> See 47 C.F.R. § 1.4(b).

<sup>9</sup> See *Washington Broadcast Management Co., Inc.* 15 FCC Rcd 6607 (2000); *Panola Broadcasting Co.*, 68 FCC2d 533 (1978); *Bay Broadcasting Corporation*, 15 FCC Rcd 23440 (Enf. Bur. 2000).

<sup>10</sup> Petition at 1-2.

<sup>11</sup> *In the Matter of Tidewater Communications, Inc.*, 18 FCC Rcd 5524 (Enf. Bur. 2003).

<sup>12</sup> *In the Matter of Cornell College*, 19 FCC Rcd 14586 (Enf. Bur. 2004).

<sup>13</sup> *Arnold Broadcasting Company, Inc.*, 15 FCC Rcd 2704 (Enf. Bur. 2000); see also Memorandum Opinion and Order, FCC 01-197 (released July 5, 2001).

<sup>14</sup> *Tidewater*, 18 FCC Rcd at 5525.

<sup>15</sup> *Cornell College*, 19 FCC Rcd at 14586.

<sup>16</sup> Official Notice of Violation, Letter from Denver Office to Station KFTM-AM, 99-DV-467 (June 22, 1999); Official Notice of Violation, Letter from Denver Office to Station KNNG-FM, 99-DV-471 (June 22, 1999); Official (continued....)

recently noted in *Saga Communications of New England, Inc.*,<sup>17</sup> “[t]he Commission has consistently rejected history of overall compliance claims based on issuance of NOV’s in other cases.”<sup>18</sup> In prior cases, the mere occurrence of a violation has been sufficient to contradict a claim of history of overall compliance.<sup>19</sup> In Arnold’s case, the claim of compliance is even more tenuous because the Bureau issued not only the *February FO*, but also numerous NOV’s.

7. In the *Forfeiture Order*, we acknowledged the excessive nature of the initial forfeiture based on the color of authority that Section 74.24 grants for STL stations and reduced the amount accordingly. The record indicates that Arnold’s claim of a history of compliance is without merit. Therefore, Arnold’s willful and repeated violations of the Act and the Rules would not warrant cancellation or further reduction of the monetary forfeiture, even if the petition had been timely.

#### IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act<sup>20</sup> and Section 1.106 of the Rules,<sup>21</sup> Arnold’s petition for reconsideration **IS DISMISSED**.

9. **IT IS FURTHER ORDERED** that, pursuant to Section 503(b) of the Act,<sup>22</sup> and Sections 0.111, 0.311, and 1.80(f)(4) of the Commission’s Rules,<sup>23</sup> Arnold **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$6,000 for violating Section 301 of the Act and Section 11.61(a)(2) of the Rules.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>24</sup> Payment may be made by credit card to the Commission’s Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Chief,

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Notice of Violation, Letter from Denver Office to Station KSTC-AM, 99-DV-472 (June 22, 1999); Official Notice of Violation, Letter from Denver Office to Station KBRU-FM, 99-DV-470 (June 22, 1999).

<sup>17</sup> DA-05-510 (Enf. Bur. 2005) (rejecting the history of compliance claim based on the issuance of multiple NOV’s to affiliate stations).

<sup>18</sup> *Id.* at 3. See Forfeiture Policy Statement, 12 FCC Rcd 17087, 17102-04, ¶¶ 32-36; on recon., 15 FCC Rcd at 303-305, ¶¶ 3-5 (1999).

<sup>19</sup> See e.g., *Moody Bible Institute*, 19 FCC Rcd 24702 (Enf. Bur. 2004) (rejecting claim of history of compliance where prior NOV’s issued). In *Moody*, the request for reduction of the forfeiture was rejected, despite the fact that the NOV’s were later dismissed.

<sup>20</sup> 47 U.S.C. § 405.

<sup>21</sup> 47 C.F.R. § 1.106.

<sup>22</sup> 47 U.S.C. § 503(b).

<sup>23</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>24</sup> 47 U.S.C. § 504(a).

Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>25</sup>

11. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Arnold Broadcasting Company, Inc., P.O. Box 830, Sterling, Colorado 80751, and to its counsel, David Tillotson, Esq., Law Office of David Tillotson, 4606 Charleston Terrace, N.W., Washington, D.C., 20007-1911.

FEDERAL COMMUNICATIONS COMMISSION

Kris A. Monteith  
Acting Chief, Enforcement Bureau

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<sup>25</sup> See 47 C.F.R. § 1.1914.